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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,560	10/31/2003	Thomas Grafenauer	P27123	8411
7055 7590 07/01/2008 GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191				
EXAMINER FERGUSON, LAWRENCE D				
ART UNIT		PAPER NUMBER		
1794				
NOTIFICATION DATE		DELIVERY MODE		
07/01/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com
pto@gbpatent.com

Office Action Summary

Application No.

10/697,560

Applicant(s)

GRAFENAUER, THOMAS

Examiner

LAWRENCE D. FERGUSON

Art Unit

1794

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 16-21 is/are pending in the application.
- 4a) Of the above claim(s) 11-15 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 16-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. This action is in response to the amendment filed March 12, 2008.

Claims 1-9 and 16-21 are pending, with claims 11-15 and 22 withdrawn as a non-elected invention.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections – 35 USC § 103(a)

3. Claims 1-3, 8-9, 16-19 and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moriau et al. (U.S. 6,006,486).

Moriau discloses a floor panel (column 1, lines 5-6 and 66-67) comprising a core (support board) made of compressed ground wood particles and binder material (column 3, lines 26-38) having a decorative top layer and a backing layer (termination layers) (column 9, lines 1-11 and Figures 2-11) where the decorative top layer is interpreted as having a structured surface. Moriau discloses additional layers can be applied to the floor panel (column 9, lines 7-9) which appears to include cover layers, as in claim 21. Because the compressed material is made of medium density fibreboard

and made of glued and compressed woodbased material, it is expected for the density of the top side of the support board to be lower than the density of the underside support board, for the support board to have a non-uniform density distribution over its cross section from the top side to the underside and for the density of the core to decrease from the top side and decrease from the underside to a substantial midpoint, which would result in a density distribution that is substantially parabolic in shape as in claims 1, 8, 16 and 20, absent any evidence to the contrary.

Although Moriau does not teach the gluing factor amount or density of the layers as in claims 2-3, density and gluing factor are optimizable features. In the absence of any evidence to the contrary, it would have been obvious to one of ordinary skill in the art to optimize the layers of the panel because discovering the optimum or workable range involves only routine skill in the art. The density and gluing factor directly affects the durability of the panel. *In re Aller* 105 USPQ 233 and see *In re Boesch*, 617 USPQ 215. Additionally, there is also no clear teaching away from the density and gluing factor of the panel by Moriau, as the reference does not exclude any values for the density or gluing factor. In claim 19, the phrase, "comprises a structure composed of a stamping" introduces a process limitation to the product claim. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966. Further, process limitations are given no patentable weight in product claims.

Claim Rejections – 35 USC § 103(a)

4. Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moriau et al. (U.S. 6,006,486) in view of Clausi (U.S. 5,855,832).

Moriau is relied on for instant claim 1 as above. Moriau does not disclose the panel comprising UF and isocyanates, as in claims 4-5 and 7. Clausi teaches a compressed wood fiber material having a binding agent including urea formaldehyde (UF) and isocyanate (column 1, lines 12-20, column 13, lines 35-40 and column 14, lines 37-39). Moriau and Clausi are both related to compressed woodbased fiber material. It would have been obvious to one of ordinary skill in the art for the adhesive material of Moriau to comprise UF and isocyanate because Clausi teaches these materials are conventional binding (adhesive) materials.

Although neither reference teaches the gluing factor for isocyanates, gluing factors are optimizable features. In the absence of any evidence to the contrary, it would have been obvious to one of ordinary skill in the art to optimize the core (support board) of the panel because discovering the optimum or workable range involves only routine skill in the art. The gluing factor directly affects the durability of the panel. *In re Aller* 105 USPQ 233 and see *In re Boesch*, 617 USPQ 215.

Response to Arguments

5. The rejection made under 35 U.S.C. 112, second paragraph is withdrawn due to Applicant's argument, indicating claim 4 sets forth the first recitation of fibers, and appropriately refers to the recited fibers without using the words "the" or "said", rendering the phrase not requiring antecedent basis.

Applicant's arguments regarding the rejection made under 35 U.S.C. 103(a) as being unpatentable over Moriau et al. (U.S. 6,006,486) have been considered but are unpersuasive. Applicant argues Moriau does not disclose or suggest the termination layer of the top side has a structured surface. The phrase, "structured surface" has been given the broadest reasonable interpretation to include flat, wavy, printed, decorative, smooth or rough surfaces. Moriau discloses a decorative top layer, which has been construed as being a structured surface. Applicant argues neither the decorative or protective layer of Moriau has a structured surface, as recited in claim 1 because in all the drawings, layer 56 is shown as smooth, where Applicant's invention comprises a termination layer having a structured surface as in Figure 1 of the instant Application, where the upper termination layer has depressions formed therein. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., Applicant's invention comprises a termination layer having a structured surface as in Figure 1 of the instant Application, where the upper termination layer has depressions formed therein) are not recited in the rejected claim(s). Although the claims are interpreted in light of

the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant further argues Moriau does not disclose or suggest the density on the top side of the support board is lower than the density of the support board on the underside. Because the compressed material is made of medium density fibreboard, which is similar to the materials used by Applicant (paragraph 0003) and made of glued and compressed woodbased material, it is expected for the density of the top side of the support board to be lower than the density of the underside support board.

Applicant argues Moriau does not disclose the density or gluing factor as in claims 2, 3 and 8-9. Examiner maintains although Moriau does not teach the gluing factor amount or density of the layers as in claims 2-3 and 8-9, density and gluing factor are optimizable features. It would have been obvious to one of ordinary skill in the art to optimize the layers of the panel because discovering the optimum or workable range involves only routine skill in the art. The density and gluing factor directly affects the durability of the panel. *In re Aller* 105 USPQ 233 and see *In re Boesch*, 617 USPQ 215. Additionally, there is also no clear teaching away from the density and gluing factor of the panel by Moriau, as the reference does not exclude any values for the density or gluing factor.

Applicant argues Moriau does not disclose wherein the density of the support board continuously decreases from the top side to a substantial midpoint of the support board and continuously decreases from the underside to the substantial midpoint. Because the compressed material is made of medium density fibreboard and made of

glued and compressed woodbased material, it is expected for the density of the core to decrease from the top side and decrease from the underside to a substantial midpoint, as in claim 16. Because claim 16 has been maintained for reasons of record, claims 17-21 are also maintained as being rejected for reasons of record.

Applicant's arguments regarding the rejection made under 35 U.S.C. 103(a) as being unpatentable over Moriau et al. (U.S. 6,006,486) in view of Clausi (U.S. 5,855,832) have been considered but are unpersuasive. Applicant argues claims 4, 5 and 7 depend from allowable independent claim 1. Because Moriau has been maintained over instant claim 1, claims 4, 5 and 7 are also maintained for reasons of record.

Examiner acknowledges Applicant's request for rejoinder, upon allowance of the elected claims.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lawrence Ferguson whose telephone number is 571-272-1522. The examiner can normally be reached on Monday through Friday 9:00 AM – 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks, can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/L. Ferguson/
Patent Examiner
AU 1794

/KEITH D. HENDRICKS/

Supervisory Patent Examiner, Art Unit 1794